IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.6.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) Nos.416 and 417 of 2006

S.Pandian .. Petitioner in both/tenant C.R.Ps.

vs.

A.G.Velayudham .. Respondent in both/landlord C.R.Ps.

Revision Petitions filed against the common judgment dated 23.11.2005, made in R.C.A.No.505/2004, 506/04 on the file of the VII Court of Small Causes, Chennai, confirming the order (common) dated 22.3.2004 in R.C.O.P.Nos.2077 and 2269 of 2003, on the file of the XIV court of Small Causes, Chennai.

For Petitioner : Mr.V.Ragavachari
For Respondent : Mr.M.Balasubramanian

COMMON ORDER:

These Revision Petitions have been filed by the petitioner against the common judgment dated 23.11.2005 rendered in R.C.A.No.505 and 506 of 2004 on the file of the learned VII Court of Small Causes, Chennai, confirming the common order in R.C.O.P.No.2077 2269/2003, on the file of the XIV Court of Small Causes, Chennai.

2. The tenant is the revision petitioner in both the Civil Revision Petitions, filed against the common judgment made by the Rent Control Appellate Authority in R.C.A.Nos.505 and 506 of 2004. The respondent/landlord filed R.C.O.P.No.2077/2003 for evicting the revision petitioner from petition schedule premises on the ground that the tenant committed wilful default in payment of monthly rents from August 2003 to October 2003. The tenant filed a counter affidavit denying any wilfull default and contended that the rent was already paid for the month of August and September 2003 but the landlord did not issue any receipt for the rents. For the month of October 2003,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the landlord refused to receive the rent when the rent was offered by him and therefore he sent a Money Order which was also refused by the landlord. Thereafter he issued a legal notice calling upon the landlord to specify a bank account so that he can deposit in the bank. Without specifying the bank account, RCOP has been filed by the landlord and before the Rent Controller, he remitted the rent for the month of October to December 2003 and the same was received by the learned counsel for the landlord. In such circumstances, there was no default at all as per the tenant.

3. The tenant has also filed RCOP No.2269/2003 to deposit the refused rent for the month of October 2003 and also the future rents in respect of the petition premises.

4. The learned Rent Controller conducted a common trialand passed an order on 22.3.2004 allowing the RCOP No.2077/03 for eviction on the ground of wilful default filed by the landlord and dismissing the RCOP No.2269/03 filed by the tenant. Aggrieved by the common order passed by the Rent Controller dated 22.3.2004, the tenant filed two appeals in RCA Nos.505 and 506 of 2004. The learned Appellate Authority also by a common judgment dated 23.11.2005 dismissed the appeals and hence the tenant has filed the above Revision Petitions against the concurrent common judgment.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent. I have also perused the documents filed in support of their submissions.

6. Learned counsel for the Revision Petitioner submitted that it is a case of non-issue of receipt by the landlord even after receiving the payments from the tenant for the months of August and September 2003. ;Insofar as the rent for October 2003 is concerned, it was refused by the landlord and therefore steps have been taken by the tenant to deposit the same in accordance with the Rent Control Act. When the rent control proceedings were pending, the monthly rents were paid then and there and as such there is no default at all. Learned counsel pointed out that if the totality of the entire facts are taken into consideration, it would prove that the conduct of the tenant is always to pay the rent and it is the landlord who is in the habit of not issuing any receipt for the rent paid and not accepting the rent when it is attempted to be paid. Thus learned counsel for the revision petitioner prays for setting aside the order of the Appellate

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Authority, confirming the order of the Rent Controller.

7. Per contra, learned counsel for the respondent/landlord submitted that even now the rent for the months of August and September 2003 were not paid and therefore the tenant is guilty of supine indifference in the payment of rent which fact has been clearly established before the authorities below and this court in its revisional jurisdiction need not disturb the same.

8. The only dispute in the present case is whether the petitioner/tenant has paid the rents for the months of August and September 2003.

9. It is admitted by the tenant that the landlord is in the habit of issuing receipts whenever the rent is being paid. It is also admitted that receipt was given by the landlord for the rent paid up to the month of July 2003. The tenant's further case is that for the month of August and September 2003, even though the rent was paid by him, the landlord did not issue receipts for the same. But the landlord refuted the statement and contended that rent was paid only up to July 2003 and no rent was paid thereafter.

10. The Rent Controller disbelieved the statement of the tenant that the rent was paid for these two months by relying on Ex.P7 which is a plaint filed in O.S.No.4580/2003. This suit was filed by the tenant seeking an injunction against the landlord. In para 6 of the plaint, the tenant stated that on 5.9.2003 when the tenant as plaintiff tendered the rent for the month of August 03 the landlord as defendant refused to accept the same. Therefore, even according to the tenant, the rent for the month of August 2003 was refused by the landlord. But in the rent control proceedings, the tenant claimed that he had paid the rent for the months of August and September 2003 and after receiving the same the landlord did not issue any receipt. This contradictory statement was taken note of by the Rent Controller to come to a conclusion that the tenant committed willful default. The Appellate Authority also relied on Ex.P7 (plaint) to come to a conclusion that the tenant has committed willful default as he has miserably failed to establish that the rent for the defaulting period has been paid by him.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. When the two authorities under the Rent Control Act have come to a conclusion, on the basis of the evidence let in before them that the tenant has committed willful default, it may not be proper for this court sitting in revision to interfere with the findings of the courts below in the absence of any illegality or perversity.

12. Whenever the landlord refused to issue any receipt for the rent paid by the tenant, it is open to the tenant to take recourse to Sec.8 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18/1960 (hereinafter called 'the Act). In the present case, the tenant claimed that when he paid the rent for the month of October 03, the same was refused by the landlord. In such circumstances, he should have meticulously followed the procedure enumerated under Sec.8 of the Act. But the tenant has straight away sent the rent by Money Order and without even waiting to see whether the Money Order has been accepted or not, he sent a legal notice dated 23.11.2003 which was ;marked as Ex.P1 calling upon the landlord to specify a bank account. This, in my view, is contrary to the provisions enumerated under Sec.8 of the Act. Section 8 of the Act is extracted as under:-

> "8. Landlord liable to give receipt for rent or advance:- (1) Every landlord who receives any payment towards rent or advance shall issue a receipt duly signed by him for the actual amount of rent or advance received by him.
>
> (2) Where a landlord refuses to accept, or evades the receipt of, any rent lawfully payable to him by a tenant in respect of any building, the tenant may, by notice in writing, require the landlord to specify within ten days from the date of receipt of the notice by him, a bank into which the rent may be deposited by the tenant to the credit of the landlord.
>
> Provided that such bank shall be one situated in the city, town or village in which the building is situated or if there is no such bank in such city, town or village, within five kilometres of the limits thereof.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Explanation:-It shall be open to the landlord to specify from time to time by a written notice to the tenant and subject to the proviso aforesaid, a bank different from the one already specified by him under this sub-section.

(3) If the landlord specifies a bank as aforesaid, the tenant shall deposit the rent in the bank and shall continue to deposit in it any rent which may subsequently become due in respect of the building.

(4) If the landlord does not specify a bank as aforesaid, the tenant shall remit the rent to the landlord by Money Order, after deducting the money order commission.

(5) If the landlord refused to receive the rent remitted by Money Order under sub-section (4), the tenant may deposit the rent before the Controller and continue to deposit with him any rent which may subsequently become due in respect of the building."

13. From the above provision of the Act, it is very clear that the tenant has to send a notice in writing requiring the landlord to specify the bank and only if the bank is not specified by the landlord, the tenant shall remit the rent by Money Order. Even when the Money Order is refused, then only the tenant may deposit the rent before the Rent Controller.

14. Here the tenant has straight away sent the Money Order on 21.11.03 and immediately sent the legal notice dated 23.11.03 calling upon the landlord to specify the bank account. The tenant has clearly admitted in the notice dated 23.11.03 that the Money Order sent by him was not yet received by the landlord. From this, it is very clear that the revision petitioner has not followed the procedure contemplated under Sec.8 of the Act to make out a case to deposit the rent before the Rent Controller. When the tenant initiates proceedings under Sec.8 of the Act, the same should be in accordance with law. Otherwise he cannot escape from the liability of being evicted. When the procedure to be followed prior to filing of the petition under Sec.8 of the Act is not resorted to by the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

tenant, the petition under Sec.8(5) of the Act is not maintainable.

15. In the light of the above, I do not find any merits in the Revision Petitions and therefore the same are dismissed. No costs. C.M.P.No.3126/2006 is also dismissed.

After pronouncement of the order today, the learned counsel for the tenant/petitioner seeks time for the tenant to vacate the premises and hand over vacant possession. Accordingly, three months time is granted to the tenant/petitioner from today to vacate and hand over the vacant possession of the premises in question to the respondent/landlord on condition that the tenant/petitioner files an affidavit of undertaking to this effect within a period of seven days from today, after serving a copy of the same to the learned counsel for the respondent/landlord.

Post the matter on 29.06.2006.

sks/vri

16.06.2006

ORDER:- This case having been posted on Monday, the third day of July 2006 for further orders in pursuant to the order made herein the presence of the abovesaid Advocates this Court made the following order:-

On 16.06.2006 at the request of the learned counsel for the tenant/petitioner a time limit of three months was granted to vacate and hand over the vacant possession of the premises, on condition that the tenant/petitioner files an affidavit of undertaking within a period of seven days.

2. When the matter was taken up today it is reported that the tenant/petitioner has filed an affidavit dated 29.06.2006, undertaking to vacate the premises and hand over the vacant possession on or before 17.09.2006.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. This Affidavit of undertaking shall form part of the order.

03.07.2006

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar, Small Causes Court, Chennai.104
2. The VII Judge, Small Causes Court, Chennai 104
3. The XIV Judge, Small Causes Court, Chennai 104

tej(Co)
nm(26.06.2006)
nm(07.09.2006)

C.R.Ps.(NPD)416 & 417/06.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/